

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ROBIN DIRK HORDON, an individual,

Plaintiff,

v.

KITSAP COUNTY SHERIFF GARY
SIMPSON, in his personal and official capacity,
KITSAP COUNTY, a municipal corporation
KITSAP COUNTY SHERIFF'S OFFICE, a
division of Kitsap County, a municipal
corporation, DEPUTY MIKE MERRILL, an
individual, DEPUTY ANDREW AMAN, an
individual, DEPUTY BRAD TROUT, an
individual, DEPUTY TONY GRAHAM, an
individual, DEPUTY BENJAMIN TEETS, an
individual,
DEPUTY TIMOTHY YOUNG, an individual,
DEPUTY JUSTIN CHILDS, an individual,
PORT OF KINGSTON, a municipal
corporation, HARBORMASTER RAYMOND
CARPENTER, an individual, EXECUTIVE
DIRECTOR GREG ENGLIN, an individual,
and MARINA LEAD AUSTIN GOFF, an
individual,

Defendants.

No. 3:20-cv-05464-RJB

FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

Pursuant to Federal Rule of Civil Procedure 15(a)(1), Plaintiff Robin Hordon files this
first Amended Complaint.

I. INTRODUCTION

1.1 This case arises out of the unlawful and unconstitutional arrest of a private citizen

1 exercising his First Amendment rights to free speech. Responding to a call from officials from
2 the Port of Kingston, three Kitsap County Sheriff's Deputies, Defendants Mike Merrill, Andrew
3 Aman, and Brad Trout, arrested Plaintiff Robin Hordon, an activist who was engaged in political
4 free speech activities in "Mike Wallace Park," a quintessential public forum, during the Port's
5 Fourth of July Celebration on July 4, 2019. The Deputies did so under standard operating
6 procedure and policy of Kitsap County and its Sheriff's Office, on the direction and advice of
7 Deputy Prosecuting Attorney John Madden, and at the behest of the Port of Kingston Defendants
8 for violation of their "sign policy," which purports to disallow any sign on Port property without
9 prior permission of the Harbormaster.

10 1.2 Also in accordance with the policies of Kitsap County and its Sheriff's Office,
11 Deputy Trout then issued a "Criminal Trespass Warning" that purported to ban Mr. Hordon from
12 the public park and other Port property "FOREVER/NO EXPIRATION." The Trespass
13 Warning does not provide notice of how this permanent ban can be appealed or challenged, and
14 in fact there is no opportunity to be heard for individuals subjected to such Trespass Warnings to
15 have such bans removed. Thus, such Trespass Warnings are issued under Kitsap County policy
16 and authority at the unbridled discretion of an individual Sheriff's Deputy.

17 1.3 After the Deputies booked Mr. Hordon and forced him to spend a night in the
18 Kitsap County Jail, Mr. Hordon hired a private attorney to defend him against criminal charges.
19 A judge released Mr. Hordon the next day on his own recognizance.

20 1.4 Several days later, on July 18, 2019, Mr. Hordon returned to Mike Wallace Park
21 with his attorney for purposes of preparing his criminal defense. Defendant Marina Lead Austin
22 Goff called 9-1-1 to report a criminal trespass. Defendant Deputy Teets responded and spoke
23 with Mr. Goff and Defendants Harbormaster Raymond Carpenter and Executive Director Greg
24 Englin, who confirmed that they did not want Mr. Hordon in Mike Wallace Park. But by the
25 time Deputy Teets arrived, Mr. Hordon and his lawyer had left.

26 1.5 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to
27 take some pictures for purposes of preparing his criminal defense. Again Marina Lead Austin

1 Goff called 9-1-1, and again Deputy Teets responded to the park, this time with Defendant
 2 Deputy Justin Childs. By the time they arrived, Mr. Hordon was no longer in the park, but
 3 Deputy Teets and Deputy Childs found him a few blocks away and arrested Mr. Hordon for
 4 “criminal trespass,” assisted by Defendant Deputy Timothy Young. The Deputies’ sole ground
 5 for arresting Mr. Hordon was the prior Criminal Trespass Warning issued by Deputy Trout on
 6 July 4, 2019.

7 1.6 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass,
 8 and the Sheriff has confirmed its effect in writing. Mr. Hordon has incurred legal fees in
 9 preparing his defense. His defense team filed a Motion to Dismiss on Monday, January 20,
 10 2020, arguing that Mr. Hordon was arrested in violation of the First Amendment. A few days
 11 later, prior to filing a response to the Motion, a Kitsap County Deputy Prosecuting Attorney
 12 voluntarily dismissed the case without prejudice. Kitsap County could decide to prosecute Mr.
 13 Hordon for those same charges any time during the applicable statute of limitations. So not only
 14 is Mr. Hordon banned from Mike Wallace Park “FOREVER,” he lives in fear of being
 15 prosecuted any day, at the whim of Kitsap County.

16 1.7 The acts described above and in greater detail below violate the First, Fourth, and
 17 Fourteenth Amendments to the United States Constitution. All defendants have violated and
 18 suppressed Mr. Hordon’s First Amendment right to free speech.

19 **II. PARTIES**

20 2.1 Plaintiff ROBIN DIRK HORDON is an individual residing in Kitsap County in
 21 the State of Washington.

22 2.2 Defendant KITSAP COUNTY SHERIFF GARY SIMPSON is an individual sued
 23 in his official capacity as the elected Sheriff of Kitsap County, and in his personal capacity. He
 24 resides in Kitsap County and at all times relevant was the Kitsap County Sheriff acting within the
 25 scope of his employment and under color of state law

26 2.3 Defendant KITSAP COUNTY is a municipal corporation formed under the laws
 27 of the State of Washington located in the Western District of Washington.

1 2.4 Defendant KITSAP COUNTY SHERIFF'S OFFICE is a subdivision of Kitsap
2 County, a county within the State of Washington and a municipal corporation located in the
3 Western District of Washington. References to Kitsap County in this complaint cross-refer to
4 the Kitsap County Sheriff's Office, and vice-versa.

5 2.5 Defendant DEPUTY MIKE MERRILL is an individual who at all times relevant
6 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
7 color of state law.

8 2.6 Defendant DEPUTY ANDREW AMAN is an individual who at all times relevant
9 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
10 color of state law.

11 2.7 Defendant DEPUTY BRAD TROUT is an individual who at all times relevant
12 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
13 color of state law.

14 2.8 Defendant DEPUTY TONY GRAHAM is an individual who at all times relevant
15 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
16 color of state law.

17 2.9 Defendant DEPUTY BENJAMIN TEETS is an individual who at all times
18 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and
19 under color of state law.

20 2.10 Defendant DEPUTY TIMOTHY YOUNG is an individual who at all times
21 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and
22 under color of state law.

23 2.11 Defendant DEPUTY JUSTIN CHILDS is an individual who at all times relevant
24 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under
25 color of state law.

26 2.12 Defendant PORT OF KINGSTON is a municipal corporation formed under the
27

1 laws of the State of Washington. This Defendant is responsible for port operations and
 2 management of public lands, including public parks, in Kingston, Washington, a town located in
 3 unincorporated Kitsap County within the Western District of Washington. Sheriff Gary Simpson
 4 is the elected Sheriff of Kitsap County. As such, Sheriff Simpson is a policymaker of Kitsap
 5 County with respect to the County's "Criminal Trespass Warning" policies and program.

6 2.13 Defendant HARBORMASTER RAYMOND CARPENTER is an individual who
 7 at all times relevant was the Harbormaster of the Port of Kingston acting within the scope of his
 8 employment and under color of state law.

9 2.14 Defendant EXECUTIVE DIRECTOR GREG ENGLIN is an individual who at all
 10 times relevant was the Executive Director of the Port of Kingston acting within the scope of his
 11 employment and under color of state law.

12 2.15 Defendant MARINA LEAD AUSTIN GOFF is an individual who at all times
 13 relevant was the "Marina Lead" of the Port of Kingston acting within the scope of his
 14 employment and under color of state law.

15 **III. JURISDICTION AND VENUE**

16 3.1 This Court has jurisdiction pursuant to 42 U.S.C. § 1983, as well as 28 U.S.C. §§
 17 1331 and 1343.

18 3.2 Venue is appropriate in the Western District of Washington pursuant to 28 U.S.C.
 19 § 1391 because at least some of the Defendants reside in this judicial district and because the
 20 events and omissions giving rise to the claims alleged here occurred within the Western District
 21 of Washington.

22 **IV. FACTUAL ALLEGATIONS**

23 4.1 The Port of Kingston is a "Port District" located in Kingston, Washington, an
 24 unincorporated community located in Kitsap County. A "Port District" is a municipal
 25 corporation created by State law "for the purposes of acquisition, construction, maintenance,
 26 operation, development and regulation within the district of harbor improvements, rail or motor
 27 vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and

terminal facilities, or any combination of such transfer and terminal facilities, and other commercial transportation, transfer, handling, storage and terminal facilities, and industrial improvements.” RCW 53.04.010(1).

4.2 Port Districts are fundamentally public entities voted into being by an election of the people who live in the district. RCW 53.04.020. They are vested with governmental authority with the power to, among other things, acquire property by purchase or condemnation (RCW 53.08.010), raise revenues through bonds or special assessments (RCW 53.08.050), operate moorage facilities (RCW 53.08.310), establish rates and charges (RCW 53.08.070), and promulgate “regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, shippers, business visitors, and members of the general public of any properties or facilities owned or operated by it,” (RCW 53.08.220). Port Districts are governed by Port Commissioners, who are publicly elected officials. RCW 53.12.

4.3 The Port of Kingston is currently one of 12 Port Districts in the State of Washington, encompassing 17 square miles of land at the northeastern end of the Kitsap Peninsula. The Port leases a significant portion of this land to the Washington State Ferry System to operate a car and passenger ferry between Kingston and Edmonds.

4.4 Near the ferry dock exists “Mike Wallace Park,” a public park created in about 1997 when the Port converted an old boatyard and repair facility into a park with public restrooms, picnic tables, and a covered stage. According to the Port’s Comprehensive Plan of Harbor Improvements, Mike Wallace Park is “home to most of Kingston’s large, outdoor community events, including the Farmers Market, Concerts in the Cove, the Fourth of July Celebration in the summer, and Kingston Cove Christmas.”

4.5 The Port of Kingston has a set of published “Rules and Regulations,” which are available on its website. <https://portofkingston.org/wp-content/uploads/2019/02/Rules-and-Regulations-FINAL-updated-Nov.-28-2018.pdf> Those Rules and Regulations purport to govern all manner of conduct on “Port property” and at “Port facilities,” including the “post[ing]” of signs. In that regard, the Rules state that “Signs may be posted in designated Port areas only

1 after receiving the Harbormaster's approval." What constitutes a "sign" or a "post[ing]" is not
2 defined, and there are no criteria by which the Harbormaster considers whether such a posting
3 may be approved. That approval is entirely within the discretion of the Harbormaster. The
4 Port's Rules and Regulations do not otherwise mention or directly govern free speech activities,
5 demonstrations, gatherings, or protests.

6 4.6 The "Kingston 4th of July Celebration" takes place in Mike Wallace Park each
7 year on July 4, touting itself as the "longest continuously running 4th of July celebration West of
8 the Mississippi." The Celebration is planned and operated by the "Kingston Fourth of July
9 Celebration" corporation, a Washington non-profit organization. The Celebration features a
10 parade, a "fun zone" for kids, a music festival, a fun run, and evening fireworks. The
11 Celebration occupies a large area of Kingston, including Mike Wallace Park and the area around
12 the Kingston Village Green Community Center. It is open to the public and does not require an
13 entrance fee.

14 4.7 Plaintiff Robin Hordon is a life-long peaceful civil activist. In 2001-2002, while
15 living in Reno, Nevada, Mr. Hordon participated in the Reno Anti War Coalition (RAWC) where
16 he developed the concept of "Civil Informationing," which sought to remedy some of the
17 weaknesses of "protests" and marches. Civil Informationing involves public display of peaceful
18 and thought-provoking messages with the goal of engaging members of the public in civil
19 discourse about discrete topics. Mr. Hordon's displays are typically free-standing signs with a
20 base, and measure between 5-8 feet high and 2-3 feet wide, with some signs attached together for
21 a total width of 5-10 feet. His displays have typically focused on the topics of women's rights,
22 Native American rights and values, healthcare as a human right, environmental preservation and
23 conservation, anti-war, voting and democracy, and the expansion of democratic socialism. Mr.
24 Hordon and his signs are well known to many, including Kitsap County Deputies. He drives a
25 distinctive blue van that is known to the community and Kitsap County Deputies.

26 4.8 Mr. Hordon has practiced Civil Informationing in cities throughout the country
27 and has done so all around the Puget Sound region for over a decade, including over 40 times at

1 Mike Wallace Park in Kingston. Over the years, Mr. Hordon has found this method of activism
2 to be both effective and rewarding, as it builds bridges and provokes dialogue rather than
3 fomenting conflict. To be effective, Mr. Hordon seeks out public events and gatherings of people
4 who are on their own time, such as at parades, holiday events, fairs, or musical shows.

5 4.9 In that vein, Mr. Hordon sought to engage in Civil Informationing on July 4,
6 2019, at Kingston's annual Fourth of July Celebration event. As he had done in prior years, he
7 displayed five large display signs along the parade route that were designed to provoke thought
8 and civil discourse. This day, Mr. Hordon had chosen signs that said "Green Peace – Yes to
9 Both," "Save Earth," "Elect Matrilineal Governances," and "VOTE – Save Democracy."

10 4.10 That afternoon, after the parade, Mr. Hordon moved his displays to Mike Wallace
11 Park, where the crowds from the parade route and other events had migrated to listen to music
12 and wait for the evening's fireworks display. He transported them in his van and parked near the
13 stage while he unloaded three of them.

14 4.11 As he was setting up the display signs off to the side of the stage, he was
15 approached by Defendants Harbormaster Raymond Carpenter and Marina Lead Austin Goff,
16 who told him to remove the display.

17 4.12 No park visitors or members of the public had complained about the display signs.
18 The signs were not blocking the view of the stage and were not interfering with pedestrian
19 traffic.

20 4.13 Harbormaster Carpenter showed him the "Signs" Rule that purported to give him,
21 the Harbormaster, the discretion to decide what signs he would approve. Mr. Hordon refused to
22 remove the signs.

23 4.14 Harbormaster Carpenter accused Mr. Hordon of using profanity and smelling of
24 alcohol. But, Harbormaster Carpenter did not tell Mr. Hordon to stop using profanity or to stop
25 smelling like alcohol; rather, he was concerned with Mr. Hordon's signs.

26 4.15 Rather than simply allow Mr. Hordon to carry on peacefully displaying his signs
27 and engaging in civil discourse on matters of public concern, Harbormaster Carpenter decided to

1 call the police to forcibly remove Mr. Hordon and his signs from Mike Wallace Park.

2 4.16 At about 5:25 pm, Defendants Deputy Merrill and Deputy Trout arrived at Mike
3 Wallace Park and spoke with Defendants Harbormaster Carpenter and Marina Lead Austin Goff.
4 The two Port officials showed the Deputies the Rule that required prior approval of the
5 Harbormaster prior to “posting” signs in the park.

6 4.17 With this Rule in hand, the Deputies approached Mr. Hordon and told him that the
7 Port officials were requiring him to remove his display signs. The Deputies showed him the
8 Rule. Mr. Hordon responded in a loud voice because he wanted witnesses to the conversation
9 with the police, firmly refusing to remove his display signs and telling the police that he had a
10 legal right to engage in speech and display his signs and banner in a public forum.

11 4.18 Shortly after 5:35, Defendant Deputy Aman arrived at the stage to assist in the
12 police action against Mr. Hordon. According to his report, he noted that Mr. Hordon had
13 “several signs displayed along the walk way [sic] that people were using.”

14 4.19 According to Deputy Aman’s report, Defendant Deputy Tony Graham arrived on
15 the scene at about this time. Deputy Graham then participated in the subsequent events
16 described below, aided and abetted constitutional harms, and failed to prevent constitutional
17 harms.

18 4.20 Defendant Deputy Tony Graham arrived on the scene at about this time,
19 participated in the subsequent events, and failed to prevent constitutional harms.

20 4.21 Deputy Aman’s report contains no allegation that he witnessed Mr. Hordon do
21 anything disruptive or illegal. He then allowed Deputy Trout to use his department-issued cell
22 phone to take pictures of Mr. Hordon’s signs. Deputy Aman later sent the pictures to the
23 prosecutor’s office to assist in the prosecution of Mr. Hordon for displaying his signs in the park.

24 4.22 Defendant Deputy Merrill claimed to have then consulted with Kitsap County
25 Deputy Prosecuting Attorney John Madden. Deputy Merrill also claimed that Mr. Madden
26 advised him that the police did have the “authority to ask Hordon to remove his signs,” and that
27 “Obstruction” would be the “best charge” if Deputy Merrill decided to arrest Mr. Hordon for

1 failing to do so.

2 4.23 This is corroborated by Deputy Aman, who stated in his report:

3 A short time later Sgt. Merrill advised the Prosecutor had indicated that if the
4 subject was not willing to comply with the Port of Kingston rules he either needed
5 to leave or could be arrested for Obstructing. We next spoke with the
6 Harbormaster, Raymond Carpenter, who indicated he had not [sic] issue if Robin
7 was willing to discuss with him where he could place his signs. He advised if
8 Robin was not willing to follow the rules he had no problem with trespassing him
9 from the property.

10 4.24 This shows that Deputies Aman, Graham, Merrill and Trout knew that the reason
11 the Port was excluding Mr. Hordon from the park was because of his signs and his refusal to
12 move them to a place designated and blessed by Harbormaster Carpenter under the Port's "no
13 signs" policy.

14 4.25 As officers of the law, Deputies Aman, Graham, Merrill and Trout are sworn to
15 uphold and defend the Constitution of the United States, and are well-aware that citizens have a
16 right to peacefully speak on matters of public concern in a public park. These deputies know,
17 and the law was clear, that citizens cannot be removed or excluded from public parks simply for
18 engaging in peaceful and non-disruptive free speech activities.

19 4.26 Despite this knowledge, and armed with the County proclaimed policy statement
20 from Deputy Prosecuting Attorney Madden, Deputy Merrill, accompanied by the other deputies,
21 informed Mr. Hordon that he could either move his signs to an area acceptable to the
22 Harbormaster or remove the signs from the park entirely, and if he refused to do one of these two
23 things, the police would arrest him for "Obstruction." More than once, Mr. Hordon asked what
24 "arrested for obstruction" meant, as he wanted to know whether he was being accused of
25 obstructing a police officer, or obstructing pedestrian traffic. He was doing neither, but Deputy
26 Merrill did not clarify.

27 4.27 Mr. Hordon did not want to be relegated to a less visible part of the park and
believed he had the right to be exactly where he was. So, he refused to either move or remove
his signs.

1 4.28 Shortly after 6 pm, Deputies Merrill, Trout, Graham, and Aman arrested Mr.
2 Hordon based solely on his refusal to remove his signs. They placed him in handcuffs and
3 escorted him to Defendant Deputy Trout's patrol vehicle for transport to the jail. They searched
4 Mr. Hordon's person and advised him of his Fifth and Sixth Amendment rights, the so-called
5 "Miranda rights." Defendant Deputy Trout then drove Mr. Hordon to the Kitsap County jail and
6 booked him for "Obstruction," now making clear that the reason for arrest was obstruction of a
7 police officer, and setting bail at \$50,000.

8 4.29 By arresting Mr. Hordon, Deputies Merrill, Trout, Graham, and Aman violated
9 the First and Fourth Amendment to the United States Constitution by preventing Mr. Hordon
10 from engaging in peaceful and non-disruptive free speech activities in a public park.

11 4.30 Arresting a person for failure to stop engaging in peaceful and non-disruptive free
12 speech activities in a public park would chill a person of ordinary firmness from future free
13 speech activity, and has chilled Mr. Hordon from engaging in free speech activity at Mike
14 Wallace Park.

15 4.31 The directive to Mr. Hordon that he had to remove his signs or be arrested--
16 vocalized by Deputy Merrill and supported and effectuated by Deputies Trout, Aman, and
17 Graham--was not a lawful one. Therefore, there was no probable cause to arrest Mr. Hordon for
18 "Obstructing" for failure to follow that directive.

19 4.32 Similarly, because people have a right to engage in peaceful and non-disruptive
20 free speech activities in public parks, the Harbormaster's "trespass" action excluding Mr. Hordon
21 from the park as also unlawful and unconstitutional. Therefore, there was no probable cause to
22 arrest Mr. Hordon for "Trespass."

23 4.33 For the first time in his life, at age 71, Mr. Hordon spent a night in jail. The
24 experience was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the
25 experience. Kitsap County then pressed Trespass charges against Mr. Hordon, who was forced
26 to hire a criminal defense attorney to defend him. He was arraigned the next day and released on
27 his own recognizance.

1 4.34 The same day of the arrest, at “1900” hours (7 pm), Officer Trout issued a
2 “Criminal Trespass Warning” that purported to ban Mr. Hordon from entering Mike Wallace
3 Park and other Port property “FOREVER/NO EXPIRATION” for the stated reasons of “public
4 intoxication,” “disturbing the peace,” and “threatening Port of Kingston employees.” *See*
5 Exhibit 1, attached.

6 4.35 The next day, on July 5, 2019, Mr. Hordon was arraigned. The Kitsap County
7 Deputy Prosecuting Attorney went even farther than the Criminal Trespass Warning and asked
8 the Court to exclude Mr. Hordon from *all Port property* (not just Mike Wallace Park) as a
9 condition of release, but the District Court Judge denied that request.

10 4.36 The Criminal Trespass Warning does not state that the owner of the property, the
11 Port of Kingston, had excluded Mr. Hordon from the property, though that was Officer Merrill’s
12 justification for arresting Mr. Hordon. And although the stated reasons for the Criminal Trespass
13 Warning were public intoxication, disturbing the peace, and threatening Port of Kingston
14 employees, these were not the Port’s reasons for calling the police to have Mr. Hordon removed,
15 and are therefore mere pretext. The sole reason for calling the police and having Mr. Hordon
16 removed from the public park was his display of signs that had not been approved by the
17 Harbormaster, and of which he disapproved.

18 4.37 The Criminal Trespass Warning warned that if Mr. Hordon should ever return to
19 Mike Wallace Park at any time “for the time period listed above” (which was “FOREVER”), the
20 police could arrest him and he would be prosecuted for “Trespass 1 RCW 9A.52.070 (gross
21 misdemeanor) or Trespass 2 RCW 9A.52.080 (misdemeanor).”

22 4.38 The Criminal Trespass Warning is a standard Kitsap County form created under
23 the authority of, and pursuant to the official policies of, Kitsap County and its Sheriff’s Office.
24 The Kitsap County Sheriff’s Office sent a copy of the Criminal Trespass Warning in this case to
25 the Kitsap County Prosecuting Attorney’s office, which received it on July 6, 2019.

26 4.39 The Criminal Trespass Warning form does not provide any information about or
27 right to an appeal. Police can simply order a person removed and banned from a particular

1 place—in this case a public park—for all eternity and that person has no ability to challenge that
2 police order.

3 4.40 Even though the stated reasons for an exclusion order can be crimes (here, “public
4 intoxication” and “disturbing the peace”), the police issue these orders before initiation of a
5 criminal prosecution and without a criminal conviction.

6 4.41 Kitsap County’s Criminal Trespass Warnings are entirely extra-judicial. No
7 judicial officer ever reviews them to see if they are factually accurate or legally justified.

8 4.42 Because Kitsap County’s Criminal Trespass Warnings banning people from
9 places, including public parks, are issued prior to criminal conviction, without any opportunity to
10 challenge or appeal them, and without approval or oversight by any court, Kitsap County’s entire
11 Criminal Trespass Warning system is unconstitutional and on its face violates the Fourteenth
12 Amendment’s guarantees of due process of law.

13 4.43 To this day, Mr. Hordon is excluded from Mike Wallace Park under fear and
14 penalty of arrest and prosecution. This constitutes an ongoing constitutional violation and harm
15 for which Mr. Hordon has no adequate remedy at law, and he is and will continue to be
16 prevented from entering that public park, let alone from engaging in the First Amendment-
17 protected free speech activities for which he was banned.

18 4.44 Mr. Hordon’s fear of arrest and prosecution are well-founded. Two weeks later,
19 on July 18, 2019, Mr. Hordon returned to Mike Wallace Park with his criminal defense attorney
20 to prepare his defense. Defendant Marina Lead Austin Goff called 9-1-1 to report a criminal
21 trespass based on the Criminal Trespass Warning. Defendant Deputy Teets responded and spoke
22 with Mr. Goff and Defendants Harbormaster Raymond Carpenter and Executive Director Greg
23 Englin, who confirmed that they did not want Mr. Hordon in Mike Wallace Park and wanted him
24 arrested based on the Criminal Trespass Warning. But by the time Deputy Teets arrived, Mr.
25 Hordon and his lawyer had left.

26 4.45 In his report from July 18, 2019, Deputy Teets stated: “I reviewed a prior arrest of
27 HORDON in ILeads dated 7/4/19 for obstruction and observed that HORDON was served with a

1 trespass warning for the Port of Kingston at the jail after his arrest on 7/4/19,” showing that he
2 knew the basis for the underlying arrest for failure to remove signs from the public park.

3 4.46 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to
4 take some pictures for purposes of preparing his criminal defense. Again, Defendant Marina
5 Lead Austin Goff called 9-1-1, and again Deputy Teets responded to the park, this time with
6 Defendant Deputy Justin Childs. By the time they arrived, Mr. Hordon had left the park. But
7 Deputy Teets and Deputy Childs found him a few blocks away and arrested him for “criminal
8 trespass,” assisted by Defendant Deputy Timothy Young. The Deputies’ sole ground for
9 arresting Mr. Hordon was the prior Criminal Trespass Warning issued by Deputy Trout on July
10 4, 2019, which had been initiated and motivated by a desire to prohibit Mr. Hordon from
11 engaging in free speech activities.

12 4.47 Deputy Teets’ report from July 21, 2019 states:

13 Hordon was last seen in his distinctive blue van by the gazebo at the Port. Goff
14 stated he saw Hordon pull his van in right by the Port stage and offload some
15 signs on the walkway where he was arrested on 7/4/2019. Hordon had two small
16 signs and one large banner. He stayed approximately 10-15 minutes in that area,
and was alone. Hordon left one sign behind. Goff said he would provide footage
from the Port security cameras when it was available.

17 This report shows that Mr. Hordon and his “distinctive blue van” were familiar to Deputy Teets.
18 On information and belief, and supported by reasonable inference from the known facts, Deputy
19 Teets knew the reason for the prior arrest and exclusion from the public park, that Mr. Hordon
20 was excluded for failing to stop engaging in free speech activities in a public park, as did
21 Deputies Child and Young.

22 4.48 Deputies Teets, Child, and Young arrested Mr. Hordon pursuant to an
23 unconstitutional “Criminal Trespass Warning” system created and maintained by Kitsap County
24 and its Sheriff’s Office. Because the Trespass Warning was itself invalid, and because
25 Defendants Englin, Carpenter, and Goff had unlawfully and unconstitutionally excluded Mr.
26 Hordon from the public park, there was no probable cause to arrest Mr. Hordon for “trespass.”

27 4.49 These facts serve to underscore the unconstitutional nature of the Criminal

1 Trespass Warning system. The lack of opportunity to appeal or challenge the original exclusion
 2 order, in violation of the Due Process clause of the Fourteenth Amendment, led directly to and
 3 proximately caused the second unconstitutional arrest.

4 4.50 For the second time in his life, Mr. Hordon spent a night in jail. The experience
 5 was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the experience.

6 4.51 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass.
 7 Mr. Hordon incurred legal fees in preparing his defense.

8 4.52 On November 26, 2019, Mr. Hordon delivered a letter to Sheriff Gary Simpson,
 9 the elected Sheriff and a policymaker for the Sheriff's office and Kitsap County with respect to
 10 the "Criminal Trespass Warning" policy and program. Mr. Hordon explained that the Criminal
 11 Trespass Warning was violating his rights to access public property, and asked Kitsap County
 12 not to arrest him when accessing these areas.

13 4.53 On December 2, 2019, Defendant Kitsap County Sheriff Gary Simpson responded
 14 in a letter, stating:

15 The Port of Kingston has lawfully restricted your access to Port property, property
 16 you have continued to access illegally. Therefore, deputies have the legal
 17 authority to arrest you on Port and/or State managed properties.

18 You have been lawfully trespassed from Port of Kingston properties is indicated
 19 on the Criminal Trespass Warning issued to you on July 4, 2019. You refused to
 20 sign the document issued to you and have provided me with a copy for reference.
 21 This suggests you have notice of the trespass warning yet have elected to violate
 22 this order by continuing to access Port property, which includes the parking lot,
 23 driveways through the parking lot, the Port Office and the Mike Wallace Park. . . .
 24 Each time you access these properties you are committing the crime of trespass.

25 * * *

26 I am ordering you to cease and desist these criminal activities or you will be
 27 subject to arrest for the criminal act of trespass upon the Port of Kingston
 28 properties.

29 If you have further clarification or need legal advice on this matter, I suggest you
 30 seek legal counsel.

31 4.54 The Sheriff's December 2, 2019 letter is a statement of policy, practice or custom

1 of Kitsap County and is a personal endorsement of an unconstitutional exclusion order from a
2 public park.

3 4.55 The Sheriff's December 2, 2019 letter constitutes ratification of the Deputies'
4 actions, and shows that they acted pursuant to County policy, practice or custom, and that
5 County policy, practice or custom was the moving force behind the constitutional violations by
6 the Deputies.

7 4.56 In the criminal matter, Mr. Hordon's criminal defense team filed a Motion to
8 Dismiss on Monday, January 20, 2020, arguing that the Deputies arrested Mr. Hordon on both
9 occasions in violation of the First Amendment.

10 4.57 A few days later, without filing any response to the Motion, the Kitsap County
11 Deputy Prosecuting Attorney voluntarily dismissed the case without prejudice. Because the
12 dismissal was without prejudice, Kitsap County could decide to prosecute Mr. Hordon for those
13 same charges any time during the applicable statute of limitations. So not only is Mr. Hordon
14 banned from Mike Wallace Park "FOREVER" on fear and penalty of arrest, he lives in fear of
15 being prosecuted any day, at the whim of the Kitsap County Prosecuting Attorney.

16 V. INJUNCTION ALLEGATIONS

17 5.1 The Port of Kingston's policy regarding signs states that "Signs may be posted in
18 designated Port areas only after receiving the Harbormaster's approval." Vesting a government
19 official with unguided discretion to approve or disapprove of free speech messages and activities
20 constitutes a prior restraint on free speech and is presumptively unconstitutional. Both on its
21 face and as applied in this case, the Port of Kingston's signs policy violates the First
22 Amendment.

23 5.2 Plaintiff Robin Hordon's rights to free speech have been and continue to be
24 violated by the Port of Kingston. Such harm is irreparable, and Mr. Hordon has no adequate
25 remedy at law. Mr. Hordon therefore seeks a court order enjoining enforcement of the present
26 policy. Because the policy itself deters people from displaying signs and exercising their First
27 Amendment rights to free speech, Mr. Hordon also seeks an order requiring removal or

5.4 Mr. Hordon seeks an order enjoining enforcement of the Criminal Trespass Warning issued by Deputy Trout that purports to exclude him from Mike Wallace Park in Kingston, Washington. Because the policy and program is also procedurally unconstitutional in every case because of its failure to provide any mechanism of appeal or opportunity to be heard, Mr. Hordon also seeks an order mandating removal or amendment of Kitsap County's Criminal Trespass Warning policy and program.

FIRST CAUSE OF ACTION

6.1 This cause of action is brought against all Defendants. The facts alleged above constitute violations of Mr. Hordon's First Amendment Right to free speech. This cause of action is brought under 42 U.S.C. Section 1983 and the First Amendment to the United States Constitution.

VIOLATIONS OF THE FOURTH AMENDMENT

6.2 This cause of action is brought against all seven individual Sheriff's Deputy Defendants, as well as Kitsap County and its Sheriff's Office. Each of the individual defendants were involved in and failed to prevent the unlawful and unconstitutional arrest of Mr. Hordon

without probable cause to believe he had committed any crime. The arrests were performed pursuant to Kitsap County official policy as demonstrated by the Sheriff's letter ratifying the officers' conduct and warning Plaintiff not to enter Port property, including Mike Wallace Park, upon penalty of arrest and prosecution. The facts alleged above constitute violations of Mr. Hordon's Fourth Amendment Right to be free from unreasonable seizure without a warrant supported by probable cause. This cause of action is brought under 42 U.S.C. Section 1983 and the Fourth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

VIOLATIONS OF THE FOURTEENTH AMENDMENT

6.3 This cause of action is brought only against Defendant Kitsap County and Sheriff Gary Simpson in his official capacity for their unconstitutional "Criminal Trespass Warning" policy and program. The facts alleged above constitute violations of Mr. Hordon's Fourteenth Amendment Right due process of law prior to deprivation of liberty and property. Indeed, Kitsap County violates the due process rights of any person subjected to its Criminal Trespass Warning policy and program. This cause of action is brought under 42 U.S.C. Section 1983 and the Fourteenth Amendment to the United States Constitution.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests relief against Defendants as follows:

7.1 An order enjoining the Port of Kingston and its agents from enforcing its "Signs" policy requiring Harbormaster approval to display signs on Port property against Mr. Hordon or others, including in public parks like Mike Wallace Park. The Court should also require the Port of Kingston remove or amend the sign policy to comply with the Constitution so that Mr. Hordon and others are not deterred from exercising their free speech rights.

7.2 Prospective and Mandatory Injunctive relief ordering Kitsap County to remove the "Criminal Trespass Warning" against Mr. Hordon and enjoining the County and its agents from enforcing that Trespass Warning by arresting Plaintiff should he choose to enter the public park known as "Mike Wallace Park."

7.5 Compensatory damages for emotional distress and mental harm, including but not to dignitary and reputational harm caused by the arrest and incarceration for two nights in the first time in Plaintiff's life.

7.7 Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and to the extent otherwise permitted by law.

7.9 Such other relief as may be just and equitable.



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